

STATE OF MICHIGAN
COURT OF APPEALS

GILD GENERAL ASSOCIATES,

Plaintiff-Appellee,

v

TOWNSHIP OF GROSSE ILE,

Defendant-Appellant,

and

GERALD HOOVER, et al,

Defendants.

UNPUBLISHED

January 28, 2000

No. 207500

Wayne Circuit Court

LC No. 96-622648-CZ

Before: Gribbs, P.J., and O'Connell and R. B. Burns*, JJ.

O'CONNELL, J. (dissenting).

I respectfully dissent. The majority opinion concludes that plaintiff may proceed with an original action if it alleges an ownership interest in the property; otherwise, plaintiff may only appeal the decision of the township. However, even if plaintiff alleges an ownership interest in the property, I do not believe that the *instant* action may be fashioned as an original action to vacate, correct, or revise a recorded plat. Rather, plaintiff seeks to avoid the condition attached to the township's approval of its preliminary plat. It may do so only on appeal to the circuit court.

MCL 560.222; MSA 26.430(222) provides that the owner of a lot in a subdivision (or the governing body of the municipality where the subdivision is located) may file an original action in circuit court to vacate, correct, or revise the recorded plat of that subdivision. Even assuming that plaintiff is able to claim an ownership interest in the subdivision, this statute does not apply to the instant action. Plaintiff received *conditional* approval of its preliminary plat for a subdivision. The approval was conditioned on the construction of a sidewalk. Plaintiff's action challenges the requirement that it construct that sidewalk. Therefore, plaintiff's action is not to correct an existing recorded plat, but is to remove a condition to final approval of its preliminary plat. If plaintiff desires to challenge the conditions

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

attached to the township's approval of its plat, it must appeal to the circuit court pursuant to Const 1963, art 6, § 28. See *Carleton Sportsman's Club v Exeter Twp*, 217 Mich App 195, 200; 550 NW2d 867 (1996). Accordingly, I would hold that the trial court erred in denying the township's motion for summary disposition.

Furthermore, I would conclude that plaintiff is estopped from asserting that the township lacked authority to condition plat approval on construction of a sidewalk outside the subdivision. Although a municipality may not condition plat approval on improvements located outside the platted subdivision, *Arrowhead Development Co v Livingston Co Rd Comm*, 413 Mich 505, 510; 322 NW2d 702 (1982), the majority correctly concludes that plaintiff may be estopped from challenging the sidewalk condition on this basis. As the majority notes, plaintiff not only agreed to the sidewalk condition, but *proposed* that the sidewalk be located outside the subdivision. Equitable estoppel applies where a party induces another party to believe a particular fact and the other party justifiably relies on that fact and will be prejudiced if the first party denies the fact. *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 141; 602 NW2d 390 (1999). Here, plaintiff induced the township into believing that it would construct a sidewalk outside the subdivision, and the township relied on this representation in approving the plat. Because the township conditioned plat approval on the construction of a sidewalk, to allow plaintiff to complete the subdivision without the sidewalk would prejudice the township. The township was authorized to require the construction of a sidewalk inside the subdivision. Plaintiff proposed that the sidewalk instead be constructed outside the subdivision. I believe that plaintiff is now estopped from asserting that the township may not require it to construct a sidewalk outside the platted subdivision.¹

Accordingly, I would reverse the trial court's denial of the township's motion for summary disposition and remand for entry of an order dismissing plaintiff's action.

/s/ Peter D. O'Connell

¹ The majority expresses reservation about the application of estoppel in this situation, however, noting that the doctrine of estoppel does not apply to ultra vires acts. See *Michigan Municipal Liability and Property Pool v Muskegon Co Bd of Co Rd Comm'rs*, 235 Mich App 183, 195; 597 NW2d 187 (1999). However, the defense of ultra vires is asserted by a municipality, attempting to avoid being bound by an agreement that it was unauthorized to enter into. *Id.* Here, the township is not asserting the defense of ultra vires; therefore, the case the majority cites is inapplicable.